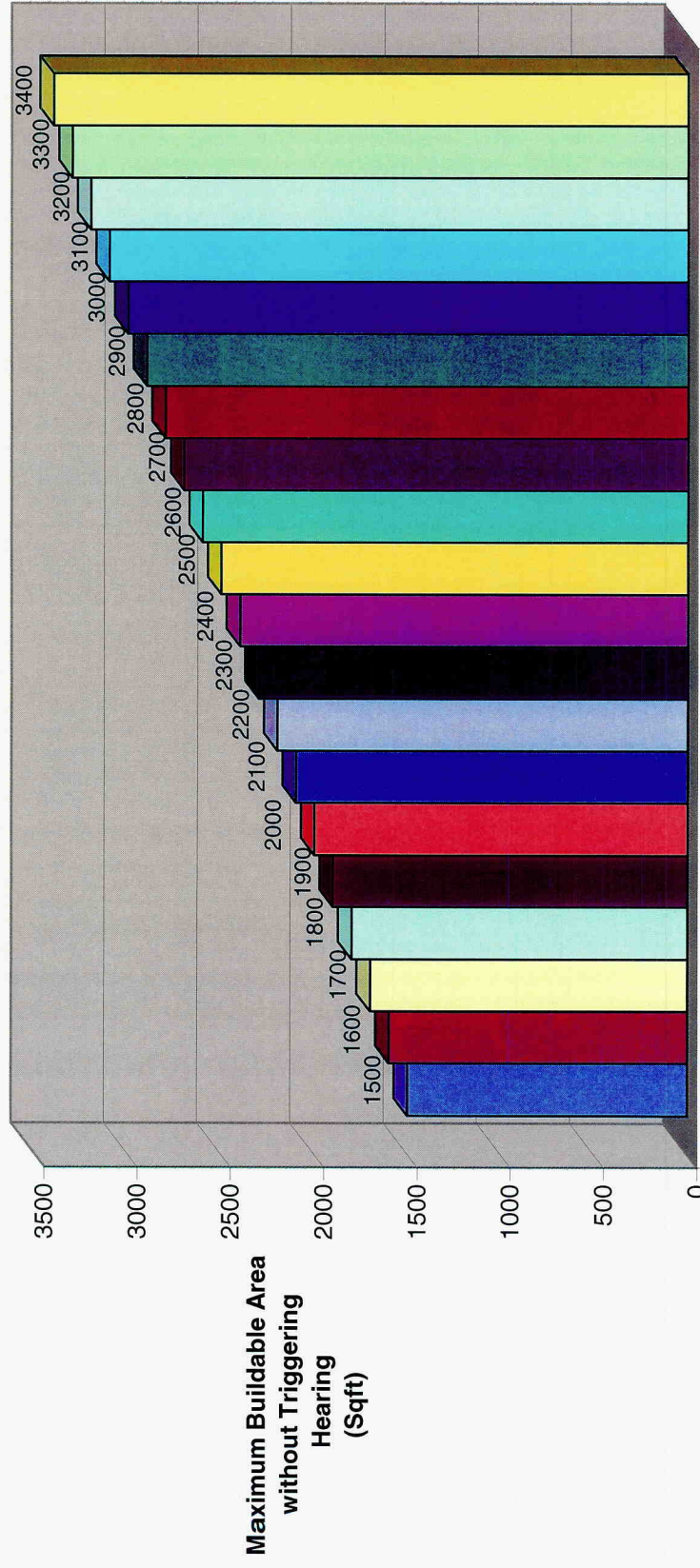
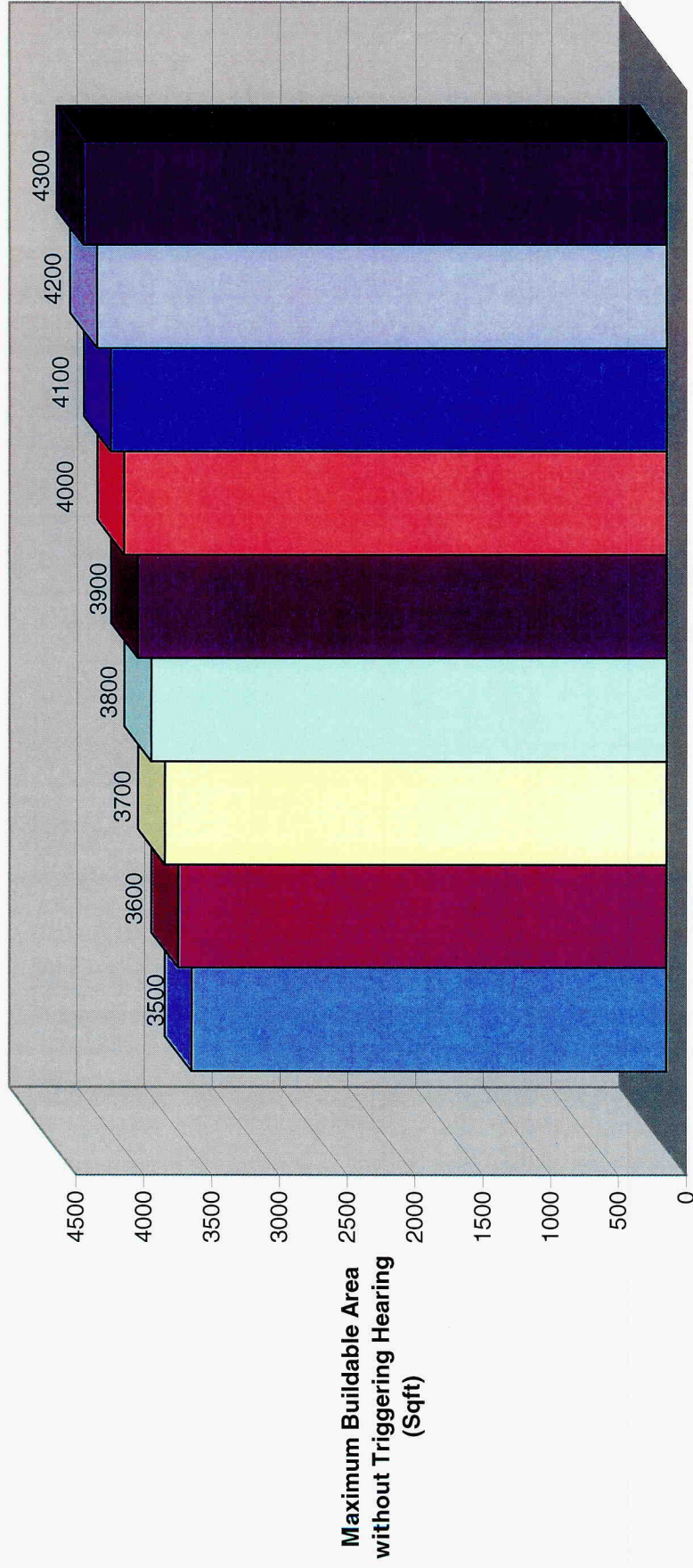


Gross Floor Area Threshold Standards (Sqft)



Gross Floor Area Threshold Standards (Sqft)



VI. CEQA REVIEW

An Initial Study was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The study determined that the project would not result in significant environmental impacts. The Negative Declaration was distributed for a 20 day public review period which closed on November 2, 2004. The Negative Declaration including the initial study has been attached as Exhibit B, along with two written comments that were received. Both comments raise questions and provide suggestions regarding the adoption of the ordinance, but do not otherwise challenge the adequacy of the environmental review. A summary of the comments and a staff response is provided below.

EBMUD: EBMUD suggests incorporating water conservation measures into the design review policies and process of the Kensington Ordinance.

Staff Response: Many residents of the Kensington community worked diligently over the course of several years drafting an ordinance which was intended to address issues important to the residents of that community (e.g. view protection). The numerous drafts and public input no doubt involved much compromise. The inclusion of a new issue at this point would certainly delay the process since it would be introducing a new issue beyond the scope of the existing proposal. Further, water conservation is currently addressed in the County Code, and is considered as part of the review of discretionary projects. It is not clear what the basis would be for imposing a different water conservation standard for residences in Kensington whereas the uniqueness of the topography, lot sizes, existing architecture and views (among other factors) can form the basis for adopting a different residential design review proposal. The consideration of new water conservation measures, apart from those in the County Code, should be countywide.

Brian Stone:

Comment #1: The initial study does not describe the impact on the affected environment in a meaningful way. How many substandard lots vs. standard lots are in Kensington? How many vacant lots? What are the additional costs? Who will bear the costs? What additional time is allotted for the new review procedure?

Staff Response: Approximately 54% of the lots in Kensington are substandard lots in terms of lot area, which means that the proposed ordinance will apply a new land use review process to a maximum of 46% of the lots that currently need only comply with the applicable zoning district standards. These calculations are based solely on lot size; the analysis of how these percentages would change if

average lot width were included was not completed as part of this review because it would involve a lot by lot analysis.

County records show that approximately 100 lots in Kensington are vacant. The adoption of the proposed ordinance will result generally in higher costs due to both the increased number of individuals who previously were not subject to review, as well as the increased staff costs for the review of projects. The adoption of the ordinance will also require a separate action by the Board of Supervisors to adjust the fee schedule. It is anticipated that staff will be suggesting a \$750 application cost, with an additional \$1000.00 deposit if a public hearing is requested.

It is, however, speculative to state whether the overall cost to an individual homeowner who currently occupies a substandard lot will conclusively be higher. The standards that are reflected in the proposed ordinance are not new issues for the community. They were previously raised in public hearings and in staff reports.

Comment #2: Little or no distinction is made between developed and undeveloped lots and it is not mentioned in the proposed General Plan policies, yet “view” was not supposed to be used as a criterion for development.

Staff Response: *The author of the letter is correct in that the proposed Combining District does not distinguish between developed and vacant parcels for the purpose of determining whether a public hearing is required. Staff would have questioned the inclusion of such an element since it would appear to be treating property owners with similar size lots differently.*

The author’s reference to the view criterion is based on an August, 2003 version of the proposed Combining District. The section to which the author is referring was removed prior to the transmittal of the proposed ordinance to the Community Development Department.

Comment #3: Floor area ratio thresholds for design review subject to appeal in the ordinance are arbitrary and capricious and penalize larger lot owners with an expensive and time consuming review process. Where and what is the rationale for this formula and the apparent penalty?

Staff Response: *The proposed thresholds simply identify when a public hearing is automatically required. For those projects that fall below the hearing threshold, a 34 day public notification is required. If a request for a public hearing is received, the project will undergo the same review as those that exceed the floor area hearing threshold.*

Staff does not concur that the proposed ordinance penalizes larger lot owners. Although the relative increase in square footage reduces as the parcel size increases, those with larger lots still are able file for larger square footage without the automatic requirement of a public hearing. The chart provided in Section V of this report clearly shows the relationship between parcel size and the hearing threshold.

Comment #4: A ten-month moratorium on issuing building permits for undeveloped lots cites a “threat to public health, safety, and welfare” and this threat is not mentioned in the Initial Study. Where are the required legislative findings to support these assertions?

Staff Response: *This comment is addressing the Kensington Interim Ordinance that is not the subject of this hearing. The adoption of that ordinance was found to be exempt from CEQA, and no challenges to that decision were filed.*

Comment #5: The 12/03-draft version of the ordinance differs substantially from the 8/03-draft version, which was sent to all parcel owners with respect to vacant lots. The 12/03-draft version should be changed to make it clear what can be expected for vacant lots (“view” was supposedly not to be a criterion for development review)

Staff Response: *There were many previous version of the draft ordinance, as would be expected with a community based project. The author is referencing a section in a previous version which utilized different standards for vacant properties. Staff would not support the inclusion of text which treated property owners differently simply based on when the structure was built.*

Comment #6: Background and development of this ordinance should be included in your analysis along with the quantification of the issues, such as number of substandard lots, compared to standard lots both improved and vacant. Also discussion of why this ordinance is not before the public for a vote seems relevant.

Staff Response: *Information regarding the number of substandard lots as well as the number of vacant lots has been included in this report. The adoption of a land use ordinance is subject to a public hearing by both the County Planning Commission and the Board of Supervisors. It should be noted that prior to the ordinance being referred to the Community Development Department, there was significant involvement by members of the Kensington community, as well as opportunities for public input. This is beyond that which is normally provided in the land use review process.*

Comment #7: The floor area ratio threshold that triggers a public hearing should be listed in chart form, that is easily readable, and is within the ordinance.

Staff Response: This report includes a chart for the parcels that range in size from 2801 square feet to 19,999 square feet (refer to Section V). An expanded chart which includes all parcel sizes present within Kensington will be prepared prior to the effective date of the Combining District. This chart is to be distributed with the “Kensington Design Review” application as a supplemental handout.

Comment #8: The additional reviews that this ordinance will generate will surely require additional County fees in the post Proposition 13 era. Proponents of projects should not be expected to incur these new fees that are attributed to the proposed ordinance. Parties that will have a new right to appeal or object should be required to bear these additional costs.

Staff Response: The author is correct that the project will result in some higher fees. The Department will be forwarding to the Board of Supervisors a proposed revision to the Fee Schedule in order to accommodate the review of projects pursuant to the proposed Combining District. At this point, staff anticipates recommending a \$750.00 filing fee and a \$1000.00 deposit for those projects which require a public hearing. The author’s suggestion that those that are requesting a public hearing be required to pay the cost of the review is inconsistent with previous decisions of the Board of Supervisors related to the establishment of fees. Certainly, requiring those who request a public hearing to pay for the costs will have the direct effect of substantially reducing public involvement.

VII. GENERAL PLAN AMENDMENT

- A. Existing General Plan Policies: The Kensington area has several land use designations, including single family residential, commercial, and public/semi-public uses, which are illustrated in the General Plan map included in Section IV of this report. At present there are no specific land use policies for the Kensington community. This General Plan Amendment is directed at providing specific policies to support the intent and purpose of the Kensington Combining District, and it would not alter any of the land use designations or underlying densities in the community.
- B. Proposed General Plan Policies: The Kensington community has expressed a strong sentiment and desire to preserve and protect views and to assure a degree of design compatibility of new residential development with the community’s existing character of older homes located on narrow and winding tree lined streets. The proposed policies are aimed at providing the policy framework for the design review procedures under the Kensington Combining District ordinance that are tailored to address the unique characteristics of the community.

C. Proposed Policies for the Kensington Area

(insert at page 3-90, Land Use Element, Contra Costa County General Plan (1995-2010))

3-271 *Allow for the review of new residential development that provides reasonable protection for existing residences in the Kensington Community with regards to: views, design compatibility (including building bulk, size, and height), adequate parking, privacy, and access to sunlight.*

3-272 *Preservation of views of scenic natural features (e.g. bay, mountains) and the developed environment (e.g. bridges, city skyline) should be incorporated into the review of development applications.*

3-273 *Review proposed residential development for design compatibility with nearby development (e.g. building mass, height, mechanical devices) and provisions for adequate parking.*

3-274 *New residential development will be reviewed against realistic impacts of privacy and sunlight on surrounding neighbors.*

3-275 *Consideration will be given to review of non-residential development in the Kensington community with policies 3-271 through 3-274 herein.*

VIII. STAFF RECOMMENDED ADJUSTMENTS TO THE COMBINING DISTRICT ORDINANCE

The proposed Kensington Combining District, which is included as Exhibit A, incorporates adjustments made by staff following a detailed review. The staff of both the Community Development Department and the Office of County Counsel worked diligently to ensure that the substance of the ordinance remained unchanged, and that the purpose and intent of the ordinance would be fulfilled. This section identifies the primary changes that were made during the process of preparing the ordinance for adoption and implementation.

A. MINOR MODIFICATIONS:

1. Article 84-74.2: General:

- (a) The text within the purpose section included the desire to promote, "...isolation from offensive emissions." It is our understanding that the intention was to ensure that mechanical devices such as vents and motors would be included within the review of a project. This

intent was included elsewhere within the Purpose section. The “isolation from offensive emissions” was eliminated, and the text regarding the preservation of residential noise levels was added to ensure that the basis for reviewing motors, fans and vents was addressed.

Although addressing motors, fans and vents was included in the Purpose and Intent section, it was not sufficiently referenced otherwise in the ordinance to ensure that it would be included in the review. As such, addressing these devices has been added to the “Standards of Consideration at Hearing.” (Refer to section 84-74.1206).

2. Article 84-74.4: Definitions:

- (a) The definition for “Floor Area Ratio,” which was utilized in the section detailing the thresholds for determining whether a public hearing is required, has been removed from the ordinance as part of the rephrasing of the Article 84-74.802. This change does not alter the standards under which a public hearing is required or otherwise alter the implementation of the ordinance.
- (b) The definition of basement referenced “habitable area.” According to the Building Code, nonconditioned space is not habitable. As such, many portions of structures would not have been covered by this definition. The basement definition was adjusted to remove the reference to habitable area.

The proposed ordinance, refer to Exhibit A, includes the addition of a new Section 82-4.290 which provides a definition of basement to be used elsewhere in the County. This definition reflects the existing practice of the Community Development Department in applying the references to “basement” found elsewhere in the Code. This is included to ensure that the proposed definition of “basement” in Kensington is not applied elsewhere in the County. Should there be interest in applying the more stringent definition, proper involvement and notification to the other unincorporated communities and to the development community must first occur.

- (c) The definition of “Surrounding Neighbors” included owners and occupants of properties within 300 feet of the subject property. This definition has been amended to eliminate the reference to occupants.

Surrounding neighbors is referenced in Article 84-74.12 which

provides the standards for consideration in deciding whether to approve or deny a project. Specifically, the proposed code states,

*“In reaching a decision, the Zoning Administrator shall apply a standard which balances the following factors:
...(2) minimizing impacts upon surrounding neighbors...”*

Those that receive notification of the public hearing are property owners within 300 feet of the site, as well as any other party who has previously filed a written request for notification. Specifying that surrounding neighbors means “owners” of property, provides consistency with the findings section.

3. Article 84-84.6 (Exemptions)

- (a) One story accessory buildings with an area of fewer than 100 square feet sited within the applicable setbacks were exempt from the ordinance. The staff modification includes increasing the 100 square feet to 120 to track with the requirement to obtain a building permit.
- (b) The exemption language for “... residences destroyed by fire, and slide, earthquake or other act of God” was altered to match the language used elsewhere in the County Code. The conditions for this exemption, which include that the siting and envelope are the same, and that the application for repair and replacement is made within two years of destruction remain unchanged.
- (c) The text that provides an exemption for applications accepted before the effective date of the chapter was amended to specify that this applies to applications which have been deemed complete.

B. SUBSTANTIVE MODIFICATIONS:

1. Interior Courtyard: The proposed ordinance included the following definition for Interior Courtyard:

“Interior Courtyard” means an unroofed area contained within a building, which is bounded on at least three sides by roofed interior space.

This definition could result in a situation in which a one foot rear extension on an “L” shaped residence would cause the majority of the length of the residence to be classified as a “courtyard” when clearly a

courtyard does not exist. Staff is proposing a modification to this definition that would provide that both opposing walls be a minimum depth of ten feet. This would ensure that the “courtyard” is actually bounded by walls. The revised definition is as follows:

“Interior Courtyard” means an unroofed area contained within a building that is bounded on at least three sides by roofed interior space, provided the two opposing walls are each at least 10 feet in depth.

2. View: Article 84-74.4 includes a definition for “view.” This section is a modification of the original proposal (refer to Exhibit D, Article 84-74.440).

View protection is an important element of the Combining District. View protection is specifically identified in the “Standards of Consideration at hearing (refer to Exhibit A – Article 84-74.1206). The original proposal includes the following text within the definition of “view”:

“View” means a scene from any primary living areas of a neighboring residence..... For purposes of this section, the term “primary living area” means the portion or portions of a neighboring residence from which a view is observed most often by the occupants relative to other portions of the residence.

There was substantial discussion regarding which rooms would be considered “primary living areas.” The assumption that this would include living, dining, kitchen and possibly master bedrooms, was quickly supplemented by offices, secondary bedrooms, and other areas (possibly not qualifying as a room) which would have a significant view window. Further, staff was concerned with attempting to ascertain on a case by case basis the view that was observed most often by the residents.

Since the clear intent of the ordinance is to address and protect views, staff recommends that the definition be broadened to ensure that all views are considered. As such, the proposed definition replaces the above cited text with:

“View” means a scene from a window in habitable space of a neighboring residence.”